

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE M. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 02-2293; Submitted on the Record;
Issued March 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 27 percent impairment of the left upper extremity and a 17 percent impairment of the right upper extremity.

This is the second appeal in the present case. In a March 22, 2001 decision, the Board set aside the Office of Workers' Compensation Programs' decision dated August 12, 1999.¹ The Board found that there was a conflict in medical opinion between appellant's treating physician and the Office medical adviser as to the extent of permanent impairment of the upper extremity and the case was remanded for referral to an impartial medical specialist for a determination regarding the extent of appellant's left and right upper extremity impairment. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

Appellant was referred to a referee physician, Dr. Bruce A. Monaghan, an orthopedist, to resolve the conflict in medical opinion evidence.

The Office provided Dr. Monaghan with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties. In a medical report dated May 16, 2001, Dr. Monaghan indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted that upon physical examination appellant's left hand was more severe with decreased protective sensibility, which was a Grade 2, which converted to a 61 to 80 percent sensory deficit and using clinical judgment, the physician selected mid-level severity of 70 percent;³ the right hand had diminished light

¹ The Office accepted the claim for bilateral carpal tunnel syndrome.

² Docket No. 00-1116 (issued March 2, 2001).

³ See page 482, Table 16-10 (5th ed. 2001) American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

touch sensibility, which was Grade 3, which converted to a 26 to 60 percent sensory deficit and using clinical judgment, the physician selected mid-level severity of 39 percent.⁴ Dr. Monaghan then utilized Table 16-15 on page 492 of the A.M.A., *Guides* and determined the nerve sensory dysfunction below the mid forearm was 39 percent of the upper extremity impairment; he then utilized the median nerve sensory dysfunction multiplier of 43 percent to determine an upper extremity impairment of 17 percent permanent impairment of the right upper extremity and 27 percent permanent impairment of the left upper extremity.

Dr. Monaghan's reports and the case record were referred to the Office medical adviser who determined in accordance with the A.M.A., *Guides* (5th ed. 2001) that appellant sustained a 17 percent permanent impairment of the right upper extremity and a 27 percent permanent impairment of the left upper extremity. The Office medical adviser did not provide any calculations in support of his decision other than indicating that "Dr. Monaghan has correctly utilized the guidelines and arrived at the appropriate [percent]."

In a compensation order dated May 30, 2001, the Office granted appellant a schedule award for a 17 percent permanent impairment of the right upper extremity and 27 percent permanent impairment of the left upper extremity.

In a June 8, 2001 letter, appellant requested an oral hearing before an Office hearing representative. The hearing was held on November 14, 2001. Appellant through his counsel disputed the impairment rating the referee physician generated because the figures were based on the fifth edition of the A.M.A., *Guides*, which did not contain the same table appellant's treating physician, Dr. David Weiss, an osteopath, utilized when he initially calculated appellant's impairment rating based on the fourth edition of the A.M.A., *Guides*.

In a decision dated February 1, 2002, the hearing representative affirmed the Office decision, dated May 30, 2001, on the grounds that the Office referee physician properly utilized the A.M.A., *Guides* fifth edition to determine appellant's impairment rating. The Office further indicated that the FECA Bulletin 01-054, issued January 29, 2001, implemented the use of the fifth edition of the A.M.A., *Guides* for use in all awards made beginning February 1, 2001 and, therefore, the referee physician properly utilized the correct edition of the A.M.A., *Guides* in his calculations of permanent impairment.

In a letter dated April 19, 2002, appellant requested reconsideration and submitted a report from Dr. Weiss dated February 12, 2002 and an electromyography dated March 27, 2002. He indicated that based on the fifth edition of the A.M.A., *Guides* appellant sustained the following impairment: sensory deficit right median nerve of 31 percent;⁵ pain related to impairment on the right of 3 percent for a total right upper extremity impairment of 34 percent;⁶ sensory deficit of the left median nerve of 31 percent;⁷ for pain related to impairment of

⁴ *Id.*

⁵ See page 482, Table 16-10; page 492, Table 16-15 (5th ed. 2001) (A.M.A., *Guides*).

⁶ See page 574, Figure 18-1 (5th ed. 2001) (A.M.A., *Guides*).

⁷ *Supra* note 5.

3 percent for a total left upper extremity impairment of 34 percent.⁸ Dr. Weiss did not provide findings upon physical examination.

In a decision dated August 9, 2002, the Office affirmed the decision dated February 1, 2002.

The Board finds that appellant has not established that he has more than a 27 percent impairment of the left upper extremity and a 17 percent impairment of the right upper extremity.

The schedule award provision of the Federal Employees' Compensation Act⁹ and its implementing regulation¹⁰ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Board has carefully reviewed the impartial medical advisers report dated April 24, 2001 and notes that Dr. Monaghan found a 27 percent permanent impairment of the left upper extremity and 17 percent permanent impairment of the right upper extremity. The A.M.A., *Guides*, on page 484, Table 16-11 set forth the procedure for determining impairment of the upper extremities by grading the severity of the motor deficit; finding the maximum impairment of the upper extremity due to motor deficit for each nerve structure; and then multiplying the severity of the motor deficit by the maximum impairment value to obtain the upper extremity impairment. Dr. Monaghan noted that appellant's left hand was more severe with decreased protective sensibility, which was a Grade 2, which converted to a 61 to 80 percent sensory deficit and using clinical judgment, the physician selected mid-level severity of 70 percent;¹¹ the right hand had diminished light touch sensibility, which was Grade 3, which converted to a 26 to 60 percent sensory deficit and using clinical judgment, the physician selected mid-level severity of 39 percent.¹² He then utilized Table 16-15 on page 492 of the A.M.A., *Guides* and determined the nerve sensory dysfunction below the mid forearm was 39 percent of the upper extremity impairment; he then multiplied the median nerve sensory dysfunction multiplier of .43 by 39 percent for the right and the same multiplier of .43 by 70 percent on the left side for an upper extremity impairment of 17 percent permanent impairment of the right upper extremity and 27 percent permanent impairment of the left upper extremity. Table 16-15 of the A.M.A., *Guides* provide a maximum median nerve sensory dysfunction multiplier of .45 for deficit in sensation below the mid forearm. As Dr. Monaghan chose a multiplier less than the maximum

⁸ *Supra* note 6.

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404 (1999).

¹¹ See page 482, Table 16-10 (5th ed. 2001) (A.M.A., *Guides*).

¹² *Id.*

.45 allowed by the A.M.A., *Guides*, his calculations are in accord with the fifth edition of the A.M.A., *Guides* and constitutes the weight of the evidence as to the percentage of appellant left and right extremity impairments.

The Board noted that Dr. Weiss submitted a supplemental report dated February 12, 2002. However, he did not explain how he calculated .34 percent left and right extremity impairments, respectively, by referencing the table, page and median nerve sensory dysfunction multiplier. Thus, his report is not in accord with the fifth edition of A.M.A., *Guides*.

The August 9 and February 1, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member